

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of the Commission's)	
Regulatory Policies to Allow Non-U.S.)	IB Docket No. 96-111
Licensed Space Stations to Provide)	
Domestic and International Satellite)	
Service in the United States)	
)	

MOTION FOR CLARIFICATION AND DECLARATORY RULING

Home Box Office (“HBO”), by its attorneys and pursuant to Section 1.2 of the Commission’s rules, hereby requests that the Federal Communications Commission (the “Commission”) clarify, through the issuance of a declaratory ruling, its October 29, 1999 First Order on Reconsideration issued in connection with streamlining the procedures governing entry into the U.S. domestic satellite market by operators of non-U.S. licensed satellites.^{1/}

Specifically, HBO requests that the Commission clarify its rules to permit receive-only earth stations to receive signals from non-U.S. licensed satellites without obtaining a license.

I. INTRODUCTION AND SUMMARY

Twenty years ago, as part of a progressive deregulatory approach to communications satellites, the Commission removed the requirement that receive-only earth stations communicating with U.S. licensed satellites apply for and receive a license.^{2/} Today, C-band

^{1/} Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket No. 96-111 (rel. Oct. 29, 1999) (“Reconsideration Order”).

^{2/} Regulation of Domestic Receive-Only Satellite Earth Stations, 74 FCC2d 205 (1979).

receive-only stations may be “registered” to protect them from future potential interference from terrestrial microwave systems. Otherwise, receive-only earth stations accessing U.S. licensed satellites are not licensed by the Commission.^{3/}

By contrast, the Commission has maintained its requirement that most receive-only earth stations communicating with foreign licensed satellites continue to file for and receive licenses under Title III of the Communications Act.^{4/} The Commission has expressed the concern that, without these licensing requirements, it will lack jurisdiction to control foreign satellites in the event the foreign licensed satellite operator should fail to comply with U.S. technical or other regulations. Thus, because the Commission does not license foreign satellites, it has concluded that its only jurisdiction over foreign satellite operators in the United States is through the earth station licensing process. Further, the Commission has stated that retaining licensing requirements for receive-only earth stations operating with non-U.S. satellites is needed, in part, “to provide a vehicle by which [the Commission can] examine factors specific to the non-U.S. *satellite*, such as equivalent competitive opportunities in the home market, content regulation, and spectrum management and other technical considerations.”^{5/}

Recently, however, the Commission has recognized the need for increased streamlining of the DISCO II rules.^{6/} Therefore, the Commission determined that it would “streamline the

^{3/} 47 C.F.R. § 25.131(b).

^{4/} 47 C.F.R. § 25.137. In the Matter of Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States; In the Matter of Amendment of Section 25.131 of the Commission’s Rules and Regulations to Eliminate the Licensing Requirement for Certain International Receive-Only Earth Stations, 12 FCC Rcd 24094 (1997) (“DISCO II”).

^{5/} DISCO II, 12 FCC Rcd at 24179-80, ¶ 201 (emphasis in original).

^{6/} Reconsideration Order at ¶ 1 (noting that the Commission’s new rules were the result of the Commission’s “experience in implementing DISCO II, and concerns raised by non-U.S. satellite service providers when seeking access to the United States”).

process by which non-U.S. licensed fixed satellites may obtain authority to serve the U.S. market.”^{7/} To accomplish this goal, the Reconsideration Order made two major changes to the previous DISCO II procedures:

- First, the Reconsideration Order amends the Commission’s rules to permit the operators of in-orbit non-U.S. satellites to request authority to provide space segment capacity service to licensed earth stations in the United States through a Petition for declaratory ruling rather than only through an application filed by an earth station operator.
- Second, the Reconsideration Order also amends the Commission’s rules to permit existing U.S. earth station licensees, without further regulatory approval, to transmit to non-U.S. satellites that are authorized, through the declaratory ruling process, to provide certain services in the United States .

The Reconsideration Order emphasizes that while the Commission believes the procedures it adopted in DISCO II meet the United States’ obligations under the WTO Basic Telecommunications Agreement, further streamlining of those processes will not cause harmful interference to existing satellite operators. Moreover, such streamlining will stimulate competition in the U.S. marketplace, provide consumers with more alternatives in providers and services, and accelerate the deployment of satellite services to U.S. customers.^{8/}

Despite the significant progress evident in the Reconsideration Order, it does not go far enough. Specifically, the Reconsideration Order fails to address the Commission’s rules related to the current licensing requirements for receive-only earth stations that seek to receive signals from non-U.S. satellites. This receive-only licensing requirement apparently remains in place despite the fact that it imposes additional burdens on U.S. entities that use foreign-licensed satellites *vis-à-vis* U.S. entities that use domestic satellites.

^{7/} Reconsideration Order at ¶ 1.

^{8/} Id. at ¶ 2.

The regulatory imbalance between receive-only earth stations was based on concerns about jurisdiction over foreign satellite operators that no longer exist after the Reconsideration Order. In light of this fact, the Commission can and should remedy this situation consistent with the pro-competitive policies of DISCO II by clarifying that the separate licensing requirement for all receive-only earth stations communicating with non-U.S. satellites is eliminated once a foreign satellite is placed on the “Permitted Space Station” list under the Reconsideration Order. Such action would promote the Commission’s policy of reducing regulatory impediments to the use of foreign licensed satellites and fulfill the United States’ non-discrimination responsibilities under the WTO. HBO recommends below a method of implementing this streamlining action that will allow the Commission to retain sufficient jurisdictional control over the parties that receive signals from non-U.S. satellites.

II. IN ORDER TO PROMOTE COMPETITION, THE COMMISSION SHOULD ELIMINATE THE REQUIREMENT THAT RECEIVE-ONLY EARTH STATIONS BE REQUIRED TO RECEIVE LICENSES IN ORDER TO ACQUIRE SIGNALS FROM NON-U.S. LICENSED SATELLITES

Cable programmers within the next year will be entering into agreements for the “next generation” of cable distribution satellites. As part of this process, HBO and others may wish to consider using foreign licensed satellites to transmit programming services to cable systems and other affiliates in the United States. If programmers were to obtain satellite capacity from non-U.S. licensed satellite operators, satellite signals from such foreign operators would be received in the United States by several thousand domestic receive-only earth stations, many of which are registered and many of which may not be. Under current Commission requirements, all of these receive-only stations would have to be licensed separately.

Because of this licensing requirement, unless decisive Commission action is taken promptly, programmers will experience substantial difficulties in implementing any use of foreign licensed satellites for the next generation. Requiring program affiliates to license several thousand earth stations in order to utilize a non-U.S. licensed satellite delivery option chosen by their programmers would be a substantial disincentive for programmers to choose a non-U.S. licensed satellite to meet their transmission requirements. For all practical purposes, this licensing requirement may preclude programmers from even considering foreign licensed satellites as a competitive alternative. This places foreign satellites at a considerable and untenable competitive disadvantage. As such, the rules as currently drafted effectively deny foreign satellite operators competitive equality in the United States and limit the effectiveness of the groundbreaking, market-opening nature of the WTO Agreement.

The results described above contravene the Commission's goal that "implementation of the WTO Basic Telecom Agreement will result in significant worldwide benefits to consumers and providers."^{9/} Rather than creating a more open marketplace, the rules, as currently drafted, create competitive inequities that are completely divergent from the pro-competitive, pro-multiple vendor spirit of the WTO Basic Telecom Agreement. Therefore, there is good reason for discontinuing the receive-only earth station licensing requirement.

III. THE COMMISSION CAN ELIMINATE THE LICENSING REQUIREMENT AND STILL MAINTAIN SUFFICIENT CONTROL OVER FOREIGN SATELLITES

Although the Commission has in the past expressed concern that the elimination of a receive-only licensing requirement will prevent it from asserting control over foreign satellite operations, this is no longer the case. As explained below, the new declaratory ruling process

^{9/} DISCO II at ¶ 2.

established in the Reconsideration Order provides the mechanism to ensure that non-U.S. licensed satellites comply with Commission technical and other rules and requirements.

A. The Commission Could Condition Grant of any Declaratory Ruling on Compliance with the FCC Rules by the Foreign Operator

Under the Commission's revised rules, non-U.S. satellite operators may file petitions for declaratory ruling, on their own behalf, seeking a ruling as to whether the Commission will permit the non-U.S. satellite to provide service in the United States.^{10/} As part of this new declaratory ruling regime, the Commission has set out stringent requirements that must be met by foreign satellite operators. For example, the Commission will require that such petitions be accompanied by the same documentation that must accompany an earth station application to access a foreign satellite under Sections 25.114 and 25.137 of the Commission's rules."^{11/} Further, in evaluating a petition for declaratory ruling, the Commission will conduct a DISCO II analysis of the information submitted to determine whether the non-U.S. satellite will operate consistently with all applicable Commission requirements.^{12/} In addition, the Commission will consider whether communications with that satellite system raise any other public interest concerns, including but not limited to national security concerns.

^{10/} The Reconsideration Order contemplates that this declaratory ruling procedure would be applicable only to non-U.S. licensed satellites that are in orbit. HBO requests that the Commission clarify that a foreign satellite need not be "in-orbit" before its operator may request authority to provide space segment capacity service to earth stations in the United States. Rather, the foreign operator, at any time after its satellite is licensed by a foreign administration and after it has begun the international coordination process, should be permitted to seek authority to communicate with U.S.-licensed earth stations, pending launch of the satellite. This approach would ensure that the foreign operator is "in a position to market its services to prospective earth station customers in a manner that is consistent with the opportunities afforded to U.S. satellite providers." Reconsideration Order at ¶ 1.

^{11/} See Reconsideration Order at ¶ 9.

^{12/} Id.

Thus, under the Commission's new regime, foreign operators will be placed under significant scrutiny to determine whether their entry into the U.S. market is appropriate. Moreover, the Commission's declaratory ruling authorizing entry will contain any operating conditions or constraints on earth stations accessing the foreign satellite "to ensure that operations will not cause harmful interference to other satellite systems and are otherwise in the public interest."^{13/} Only when the Commission is satisfied with the proposed foreign satellite's operations and articulates any necessary conditions, will the particular satellite be placed on the Permitted Space Station list.

Because of this new declaratory ruling process, the Commission should no longer be concerned that it must license receive-only earth stations in order to maintain control over the foreign satellite operations. Instead, the Commission can adequately protect U.S. interests over foreign satellite transmissions by conditioning the grant of a declaratory ruling on the non-U.S. satellite operator's continued compliance with the Commission's technical and other requirements. If the grantee fails to comply, it simply would be removed summarily from the Permitted Space Station list.

Conditioning the placement of the foreign satellite on the Permitted Space Station list, on the foreign satellite operator's continued compliance with the Commission's rules, obviates the need for a receive-only license requirement. In effect, the Commission would retain a significant level of regulatory control over the operations of the foreign satellite. Accordingly, HBO submits that, when the Commission places a foreign satellite on the Permitted Space Station list, it should declare that receive-only earth stations are permitted to receive signals from such satellites so long as the satellite complies with the Commission's requirements and maintains its

^{13/} See Reconsideration Order at ¶ 12.

place on the list. If the foreign operator deviates from the requirements, the space station would be removed from the list and the authority of receive-only earth stations to receive signals from the satellite would cease to exist.

B. In the Alternative, the Commission Could Exercise Sufficient Control Over Foreign-Licensed Satellites By Granting Blanket Licenses To Receive-Only Facilities On a Streamlined Basis

If the Commission believes that some form of receive-only “licensing” still is necessary, it could issue blanket licenses to all owners of receive-only earth stations wishing to receive signals from a foreign-licensed satellite that is on the Permitted Space Station list. The authorization should be automatic. In other words, the Commission could specify, as part of its declaratory ruling on a foreign satellite, that operators of receive-only earth stations are licensed to receive signals from the foreign satellite when it is placed on the Permitted Space Station list. These licenses would be of indefinite duration and would be subject to the Commission’s technical and other rules. To the extent a foreign satellite operator loses its place on the list, the blanket license would then be revoked.

These “blanket” authorizations would do a great deal to streamline the current state of affairs because receive-only licensees would not be required to make any filings, identify specific sites of antennas, or supply any technical information regarding the antennas. HBO believes that this approach would help put foreign satellites on competitively neutral footing with domestic satellites by removing the tremendous burden associated with separately licensing thousands of receive-only earth stations.

IV. CONCLUSION

For the foregoing reasons, HBO respectfully requests that the Commission clarify its Reconsideration Order in accordance with the procedures outlined in Section III above, and preferably in accordance with Subsection A. The policies announced in the DISCO II decision can provide substantial pro-competitive benefits to consumers of satellite services if there is a mechanism in place to ensure that the uses of domestic and foreign satellites are neutral from a regulatory perspective. That regulatory neutrality does not exist today. As a consumer of satellite services, HBO believes that its proposals would be a significant step forward in achieving regulatory neutrality between U.S. and foreign-licensed satellites, and yet would preserve for the Commission the mechanism to address situations where a foreign satellite operator might deviate from any required technical parameters. Because significant numbers of next-generation satellite capacity agreements will be negotiated within the next year, it is imperative for the Commission to move quickly to resolve these issues if U.S. satellite users are to realize the benefits from foreign competition envisioned by DISCO II.

Respectfully submitted,

**HOME BOX OFFICE, a Division of
Time Warner Entertainment Company, L.P.**

Benjamin J. Griffin
Uzoma C. Onyeije
**MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.**
701 Pennsylvania Avenue, N.W., Suite 900
Washington, D.C. 20004
(202) 434-7300

Its Attorneys

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